



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on March 21, 2019 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

In March of 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord with the Dispute Resolution Package. The Agent for the Landlord acknowledged receipt of this evidence, with the exception of the document titled "Deposit Receipt". All of the evidence the Landlord acknowledged receiving was accepted as evidence for these proceedings.

The parties were advised that the "Deposit Receipt" the Landlord did not acknowledge receiving could not be accepted as evidence. The Tenants requested an adjournment for the purposes of re-serving this document. The parties were advised that the hearing would be adjourned if I felt it was necessary for me to view this document prior to rendering a decision in this matter. The parties were advised that I would issue an interim decision in which I provided them with appropriate instructions if I determined it necessary to adjourn the hearing. The parties were advised that I would issue a final decision if I did not find it necessary to adjourn the hearing.

On June 02, 2019 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, by fax, although she could not recall the date of service. The Tenants submitted no evidence to corroborate that this evidence was served. The Agent for the Landlord stated that this evidence was not received.

The Tenants were advised that the hearing would proceed; that they could speak to the evidence they submitted on June 02, 2019; and that they could request an adjournment if, at any point during the hearing, they felt it was necessary for me to physically view these documents. At the conclusion of the hearing the male Tenant stated that he did not believe it was necessary for me to physically view this evidence.

On June 19, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, by courier, on June 19, 2019. The Landlord submitted no evidence to corroborate that this evidence was served. The male Tenant stated that this evidence was not received.

The Agent for the Landlord was advised that the hearing would proceed; that he could speak to the evidence the Landlord submitted on June 19, 2019; and that he could request an adjournment if, at any point during the hearing, he felt it was necessary for me to physically view these documents. On two occasions during the hearing the Agent for the Landlord requested an adjournment for the purposes of re-serving the Landlord's evidence.

The Agent for the Landlord explained that the Landlord's evidence included receipts and a list of damages done to the rental unit. The parties were advised that the issues in dispute at these proceedings are limited to the issues outlined on the Tenants' Application for Dispute Resolution. Specifically, the parties were advised that the primary issue to be determined is whether or not the Landlord complied with the Landlord's obligation in regards to the return of the security deposit.

The parties were advised that whether or not the rental unit was damaged during the tenancy is not an issue that will be considered at these proceedings. As damage to the rental unit is not an issue that will be considered at these proceedings, I find that any evidence the Landlord submitted that relates to damage to the rental unit is not relevant to these proceedings. As the evidence the Landlord submitted on June 19, 2019 relates to damage to the rental unit, which is not relevant to these proceedings, I find that the Landlord's evidence is not relevant to these proceedings. As the

Landlord's evidence is not relevant to these proceedings, I denied the Agent for the Landlord's request for an adjournment for the purposes of re-serving this evidence.

The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for damage to the rental unit.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Agent for the Landlord and the Tenants agree that

- this tenancy began on February 01, 2018;
- rent of \$4,200.00 was due by the first day of each month;
- the Tenants paid a deposit of \$4,200.00 at the start of the tenancy;
- the Tenants were told that \$2,100.00 of the deposit was for a security deposit and that \$2,100.00 of the deposit was for ½ of the last month's rent;
- the tenancy ended on January 15, 2019;
- a condition inspection report was completed at the start of the tenancy;
- a condition inspection report was completed at the end of the tenancy;
- the Tenants did not authorize the Landlord to retain any portion of the deposits paid at the start of the tenancy; and
- the Landlord did not return any portion of the deposits paid at the start of the tenancy.

The male Tenant stated that he believes the forwarding address was written on the final condition inspection report that was completed at the end of the tenancy, although he is not certain as a copy of that report was not provided to the Tenants. The Agent for the Landlord stated that he does not know if a copy of the final condition inspection report was provided to the Tenants.

The female Tenant stated that during the final inspection of the unit she wrote the Tenant's forwarding address on a piece of paper and provided it to the female agent for the Landlord who was completing the inspection report on January 15, 2019. The Agent for the Landlord stated that he has spoken with the female agent for the Landlord

who was completing that inspection report and she advised him that she did not receive a forwarding address from the Tenant.

The Agent for the Landlord stated that if the Landlord had been provided with a forwarding address in January of 2019 the Landlord would have filed a claim for damages at that time.

The Agent for the Landlord stated that the Landlord intended to ask for a forwarding address in March of 2019 when he was going to meet the Tenants to recover the keys and a garage remote control. The male Tenant stated that there was no plan to meet in March of 2019, as the keys and one remote control were returned to the Landlord on January 15, 2019. The male Tenant stated that the Tenants lost the second remote control that had been provided with the tenancy.

Analysis:

On the basis of the undisputed evidence I find that the Tenants paid a security deposit of \$2,100.00 at the start of the tenancy.

On the basis of the undisputed evidence I find that the Tenants were also required to pay a deposit of \$2,100.00 as ½ of the last month's rent.

The *Residential Tenancy Act (Act)* defines a security deposit as:

money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

I find that the \$2,100.00 deposit that was paid as ½ of the last month's rent constitutes a security deposit, as that term is defined by the *Act*, as it was collected to be held as security for rent that was due at the end of the tenancy.

I find that that it is not necessary for me to adjourn this hearing to provide the Tenants with the opportunity to re-serve the Landlord with the document titled "Deposit Receipt". I find that regardless of whether this receipt declared that the \$4,200.00 deposit that was paid at the start of the tenancy was a security deposit or that a portion of it was for ½ of the last month's rent, I would conclude that the entire \$4,200.00 deposit constituted a security deposit.

I find that on January 15, 2019 the female Tenant provided a female agent for the Landlord with a forwarding address, in writing, when those parties met to inspect the rental unit. In reaching this conclusion I was heavily influenced by the testimony of the female Tenant. I found her testimony in this regard to be consistent and forthright. I found her testimony in this regard to be more compelling than the Agent for the Landlord's testimony that the female agent for the Landlord told him that a forwarding address was not provided at the time of the final inspection, as his testimony is subject to the frailties of hearsay evidence. In the absence of testimony or documentary evidence from the female agent for the Landlord who conducted the final inspection, I prefer the testimony of the female Tenant.

In determining that a forwarding address was provided on January 15, 2019, I have placed little weight on the Agent for the Landlord's testimony that the Landlord would have filed an Application for Dispute Resolution in January of 2019 if they had been provided with a forwarding address on January 15, 2019. I have placed little weight on this testimony as it is not consistent with the Landlord's actions.

The Agent for the Landlord acknowledged receiving the Tenants' Application for Dispute Resolution with their service address that was mailed on March 21, 2019. If the Agent for the Landlord's assertion that the Landlord would have filed an Application for Dispute Resolution in January of 2019 if they had received a forwarding address on January 15, 2019 were true, I would expect that the Landlord would have filed an Application for Dispute Resolution shortly after being provided with the Tenants' service address in March of 2019. In these circumstances, however, there is no evidence that the Landlord file an Application for Dispute Resolution shortly after receiving the Tenants service address in March of 2019.

In determining that a forwarding address was provided on January 15, 2019, I have placed little weight on the Agent for the Landlord's testimony that he intended to ask for a forwarding address in March of 2019 when he was meeting the Tenants to recover the keys and a garage remote control. I have placed little weight on this testimony because the Tenants do not acknowledge a planned meeting in March of 2019 and there is no evidence to corroborate the Agent for the Landlord's testimony of such a plan.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit; more than 15 days has passed since the tenancy ended and the forwarding address was received; and the Landlord did not file an Application for Dispute Resolution until June of 2019 .

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit of \$4,200.00.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$8,500.00, which includes double the security deposit of \$4,200.00 and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 03, 2019

Residential Tenancy Branch